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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 315 76.

REYMANN BREWING COMPANY, APPELLANT,

vs.

HARRY BRISTER, TREASURER OF THE COUNTY OF JEFFERSON, IN THE STATE OF OHIO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED MAY 31, 1899.

(17,431.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 6, 1899.

1 THE UNITED STATES OF AMERICA, *Southern District of Ohio, Eastern Division,* } *ss:*

At a stated term of the circuit court of the United States of America within and for the eastern division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Columbus, Ohio, in said district, on the first Tuesday of December, being also the sixth day of that month, in the year of our Lord one thousand eight hundred and ninety-eight, and of the American Independence the one hundred and twenty-third—present, the Honorable Albert C. Thompson, district judge—among the proceedings had were the following, to wit:

REYMANN BREWING COMPANY, a Corporation Organized, Existing, and Doing Business under and by Virtue of the Laws of the State of West Virginia, Complainant,
vs.
HARRY BRISTER, Treasurer of the County of Jefferson, in the State of Ohio, Defendant.
} No. 852. In Chancery.

Be it remembered that heretofore, to wit, on the thirteenth day of January, in the year of our Lord one thousand eight hundred and ninety-eight, came the complainant herein, by its attorney, and filed in the clerk's office of the court aforesaid its certain bill of complaint against the defendant herein; which said bill of complaint is clothed in the words and figures following, to wit:

Bill of Complaint.

2 In the Circuit Court of the United States for the Southern District of the State of Ohio, Eastern Division.

REYMANN BREWING COMPANY, a Corporation Organized, Existing, and Doing Business under and by Virtue of the Laws of the State of West Virginia,
vs.
HARRY BRISTER, Treasurer of the County of Jefferson, in the State of Ohio.
} In Chancery, with Injunction.

Bill of complaint of the Reymann Brewing Company, a corporation.

Your complainant, The Reymann Brewing Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its principal office in the city of Wheeling, in said State, and a citizen of the State of West Virginia, complains of Harry Brister, treasurer of the county of Jefferson, State of Ohio, and a citizen of the State of Ohio, with

his office at Steubenville, a city of said State, and respectfully showeth to your honor as follows:

That your complainant is a citizen of the State of West Virginia and is the owner of a certain brewery or manufactory, together with the necessary appurtenances thereto, situate and located in the city of Wheeling, in the State of West Virginia, aforesaid.

That your complainant, as such owner, is engaged in the manufacture and sale of various brands of beer; that said beer when manufactured and prepared for shipment and sale by your complainant is packed and contained in wooden barrels of various sizes, known to the trade as one-eighth, one-fourth, one-half,
3 and barrels, each one of said one-eighth, one-fourth, one-half, and barrel being a separate and original package, to be sold and vended by your complainant in exactly the same condition and shape as when shipped from said brewery or manufactory; said beer is also contained and packed in glass bottles, securely sealed, of various sizes, known to the trade as pints and quarts respectively, and that twenty-four bottles of said quarts or thirty-six bottles of pints are packed or contained in a large wooden case or box, securely sealed, and known to the trade as a case.

That each case is a separate, original, and unbroken package, to be sold or vended by your complainant in exactly the same shape and condition as when packed or shipped from the brewery or manufactory of your complainant. Your complainant does not in any instance open or break any of these cases or boxes, but, on the contrary, sells the box or case just as it is packed at the brewery, in West Virginia.

Your complainant further showeth unto your honor that in the course of its business of the manufacture and sale of beer as aforesaid, it has from time to time heretofore and is now and expects to continue to ship its product, packed as aforesaid, in said original and unbroken cases, one-eighth, one-fourth, one-half, and barrels, by a common carrier to the city of Steubenville, in the county of Jefferson and State of Ohio, there to be vended and sold in exactly the same shape and condition as when shipped from said manufactory or brewery, in the city of Wheeling aforesaid, to wit, in said original and unbroken cases and one-eighth, one-fourth, one-half, and barrels.

And, further, your complainant showeth unto your honor that in order to facilitate the sale of its product of beer it has in its employ in the capacity of an agent or driver in the city of Steuben-
4 ville aforesaid one Burt Meyers, and to whom said shipments or consignments of said original and unbroken packages were made, and by said agent or driver in the regular course of transportation duly received; thereupon the said agent or driver, by virtue of his duties in this behalf, proceeds to store in a common storage-house in said city of Steubenville the said original and unbroken packages, and thereupon the said agent from customers in the said city of Steubenville, Jefferson county, Ohio, solicits, receives orders for, and actually sells the said original, unbroken packages to whomsoever of the customers of your said complainant in the

said city of Steubenville, in the county aforesaid, as are desirous of purchasing same.

That upon the 7th day of January, A. D. 1898, in the said city of Steubenville, county of Jefferson and State of Ohio, the said defendant, Harry Brister, without authority of law and assuming to act in his capacity of treasurer of said Jefferson county and under the authority of a certain statute of Ohio, commonly known as "the Dow law" and legally known and promulgated as sections 4364–9 to 4364–23, inclusive, of the Revised Statutes of Ohio (Smith and Benedict's edition), then and there unlawfully seized and took into his possession and away from the custody and control and possession of the said agent or driver of your complainant the following property of your said complainant, viz:

Two horses (bay geldings), two horse covers, one set of double harness, one beer wagon, thirty-seven of said original and unbroken cases of beer containing quarts, four of said original and unbroken cases of beer containing pints, sixty-five original and unbroken wooden barrels of beer of one-eighth size, one hundred and fourteen original and unbroken wooden barrels of beer of one-quarter size, twenty-nine original and unbroken wooden
5 barrels of beer of one-half size; and your complainant further shows that the said defendant, Harry Brister, treasurer as aforesaid, still unlawfully holds in his possession and detains all of said property and refuses to return and surrender the same to your complainant, although repeatedly requested by your complainant so to do, and is advertising the said property for sale and is threatening and intending to sell the same at public auction on Friday, the 21st day of January, 1898, at 12 o'clock; that each of the said original and unbroken cases and wooden barrels of beer, together with the beer contained therein, was manufactured and packed at the brewery or manufactory of the complainant, in the city of Wheeling aforesaid, and the said original and unbroken cases and wooden barrels were by your complainant shipped directly and continuously from the said brewery and manufactory to the said agent, Burt Meyers, at the city of Steubenville aforesaid, and then and there were respect*fu*lly received and held by the said agent in the said original and unbroken cases and wooden barrels until unlawfully seized by the said defendant, as hereinbefore charged; that said horses (bay geldings), covers, harness, and wagons were therefore and at the time of said unlawful seizure being used by your complainant in and about the delivery to purchasers thereof of the said original and unbroken cases and wooden barrels of beer.

Your complainant here shows that the said defendant has threatened to make further seizures of any of said original and unbroken cases or wooden barrels of beer that your complainant may thereafter ship to its said agent at the city of Steubenville aforesaid, and your complainant believes that the said defendant intends to carry said threat into execution and effect.

Complainant avers and charges that as a corporate resident
6 of the State of West Virginia it has a lawful right to manufacture its said product at its said brewery and manufactory

and pack said product in the manner shown and ship said original and unbroken cases and wooden barrels of beer to its agent in the city of Steubenville aforesaid and to continue so to do without interference, restriction, hinderance, or delay from any person whomsoever, and your complainant respectfully here shows to your honor that it desires and intends to continue so doing.

Your complainant avers and charges that its said property so unlawfully seized and detained by the said defendant is of the value of twenty-five hundred dollars, and that the value of said original and unbroken cases and wooden barrels of beer intended to be hereafter shipped by your complainant from its said brewery or manufactory to its said agent or driver at the said city of Steubenville will exceed the sum of two thousand dollars.

Your complainant further showeth unto your honor that the statutes or acts of the General Assembly of the State of Ohio aforesaid commonly known as "the Dow law," requiring the assessment of a tax upon the business of trafficking in spirituous, vinous, malt, or intoxicating liquors, recognizes such liquors as the subjects of lawful manufacture, barter, sale, export, and import in the State of Ohio, and that such liquors have been and are being and will continue to be lawfully used and consumed as a beverage by citizens and residents of the State of Ohio.

Your complainant further charges and avers that the acts of the General Assembly of the State of Ohio discriminate in favor of citizens of the State of Ohio engaged in the manufacture of spirituous, vinous, malt, or intoxicating liquors against citizens of other States engaged in the same business in this, that by said acts
7 said citizens of the State of Ohio engaged in such business are exempt by express provision from the payment of the tax (known as the Dow tax) sought to be imposed on this complainant and other citizens of other States engaged in the same business and selling in the State of Ohio goods manufactured in other States.

Your petitioner here charges and avers that the said acts of General Assembly of the State of Ohio, in so far as they authorize or justify the act of the said defendant, the said Harry Brister, treasurer as aforesaid, in seizing said property or in any way attempt to abridge the right of your complainant of importation of its manufactured product aforesaid from the State of West Virginia into the said city of Steubenville, in the State of Ohio, and there to sell the same in said original and unbroken cases or wooden barrels of beer or in anywise hinder and prevent complainant's intercourse, commerce, and trade with citizens and residents of the State of Ohio in the manufacture and sale of its product in such original and unbroken cases or wooden barrels of beer, *as* in conflict with the Constitution of the United States and is null and void.

Your complainant further avers and shows to your honor that the questions involved in this cause arise under and involve the construction of the laws and Constitution of the United States.

Your complainant charges that it has no place of business in said Jefferson county, Ohio, and does not own, lease, or possess any storage-house or other establishment therein, but, on the contrary,

deals with and delivers to its customers directly through the agency of the common carrier.

Your complainant charges, avers, and shows to your honor that if the said defendant, Harry Brister, is permitted to retain the custody and possession of said personal property and ultimately sells the same (as your complainant charges that the said defend-
8 ant intends to do) that your complainant will be irreparably damaged not only in the loss of its said personal property, but also in the loss of its trade and custom at said city of Steubenville; that if the said defendant, Harry Brister, is permitted to make further seizures of any of said original and unbroken cases or wooden barrels of beer (as your complainant charges the said defendant intends to do) that your complainant will be irreparably damaged and injured in the entire destruction of its said business of selling said original and unbroken cases or wooden barrels of beer at the said city of Steubenville and in the entire loss of its trade and custom at said city; that if the said defendant, Harry Brister, is permitted to retain the possession of complainant's said property and to make said further threatened seizures, then the retention and said further seizures by said defendant, Harry Brister, prevent the exercise by your complainant of its right to import without molestation lawful commodities, the products of the State of West Virginia into the State of Ohio; that if the said defendant, Harry Brister, is permitted to retain the possession of complainant's said property and to make said further threatened seizures, then your complainant, to enforce its rights, must become involved in numerous suits; and your complainant further shows that if the said defendant, Harry Brister, is permitted to retain the possession of said property and to make said further threatened seizures and destroy, hinder, and obstruct the said business of your complainant in the said city of Steubenville, county of Jefferson and State of Ohio, that your complainant is totally without an adequate remedy at law.

In tender consideration of the premises, and being remediless save by the intervention of a court of equity, your complainant prays your honor to restrain and enjoin the said defendant, Harry
9 Brister, from further retaining the possession of all said property of said complainant; that the said defendant, Harry Brister, be restrained and enjoined from making any further seizures of said original and unbroken cases and wooden barrels of beer that may hereafter be shipped by your complainant from its said brewery or manufactory to its said agent or driver at the said city of Steubenville; that the said defendant, Harry Brister, be restrained and enjoined from interfering with or in any manner obstructing or hindering the importation of the lawful commodity, its product from the State of West Virginia to the State of Ohio, and that a preliminary injunction may be issued restraining him from the doing of said several acts and the continuation thereof until final hearing of this cause or further order of court.

Your complainant further prays that the said defendant, Harry Brister, be ordered and directed to immediately surrender to your complainant or its said agent, the said Burt Meyers, all of the said

property unlawfully seized and held by the said defendant, Harry Brister, as aforesaid, and your complainant prays that all proper and necessary process may issue, and that it be granted such further and general relief as in the premises may be just and equitable; and for this your complainant will ever pray.

THE REYMANN BREWING COMPANY,
By JOHN A. HOWARD,
Attorney for Complainant.

UNITED STATES OF AMERICA, }
Hamilton County, Ohio, } *ss:*

On this 13th day of January, 1898, before me, a notary public in and for the said county, appeared John A. Howard, who made solemn oath that he is the agent of and attorney for the plaintiff, The Reymann Brewing Company, a corporation; that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge.

JOHN A. HOWARD.

Sworn to before me and in my presence signed on the date aforesaid.

[SEAL.] WM. RINCKHOFF,
Notary Public in and for Hamilton County, Ohio.

Bill of complaint endorsed as follows:

CLERK: Let an order issue restraining said defendant from offering for sale or selling any of the property of the complainant in the bill described, or from seizing any other property of said complainant as a means of collecting said Dow tax, until the further order of this court upon the motion for preliminary injunction this day filed, upon complainants giving bond in $500.
Jan. 13, '98.

WM. H. TAFT,
Circuit Judge.

And afterwards, to wit, on the 13th day of January, A. D. 1898, the following motion for preliminary injunction was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Motion for Preliminary Injunction.

In the Circuit Court of the United States in and for the Southern District of Ohio.

REYMAN BREWING COMPANY, a Corporation,
vs.
HARRY BRISTER, Treasurer of the County of Jefferson, Ohio. } Motion.

Comes now the plaintiff, The Reyman Brewing Company, by John A. Howard, its attorney, and moves the court for a prelim-

inary injunction against the defendant, restraining him as
11 to the acts and things set forth in the bill of complaint until final hearing or further order of court.

THE REYMANN BREWING COMPANY,
By JOHN A. HOWARD,
Attorney for Plaintiff.

And afterwards, to wit, on the 17th day of January, A. D. 1898, the following injunction bond was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Injunction Bond.

THE UNITED STATES OF AMERICA, *Southern District of Ohio,* } *ss:*

Injunction bond.

Know all men by these presents that the Reymann Brewing Company, a corporation, principal, and George C. McKee and ——, sureties, — held and firmly bound unto Harry Brister, treasurer of Jefferson county, Ohio, in the sum of five hundred dollars; to the payment of which we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 15th day of January, A. D. 1898.

The condition of the above obligation is such that whereas the said Reymann Brewing Company, a corporation, duly incorporated, existing, and doing business under and by virtue of the laws of West Virginia, a citizen of the State of West Virginia, having filed, on the chancery side of the circuit court of the United States for the southern district of Ohio, a bill against the said Harry Brister, treasurer of Jefferson county, Ohio, a citizen of Ohio, and having obtained an allowance of an injunction, as prayed for in said bill, from Hon. William H. Taft, judge of said court:

Now, if the said Reymann Brewing Company, a corpora-
12 tion, as aforesaid, shall abide the decision of said court and pay all moneys and costs which shall be adjudged against it in case the said injunction shall be dissolved, then these presents shall be void; otherwise to remain in full force.

[SEAL.] REYMANN BREWING COMPANY, [SEAL.]
By PAUL O. REYMANN, *V. Pres't.* [SEAL.]
GEORGE C. McKEE. [SEAL.]

Signed and sealed in presence of—
S. W. MOYES.
MAGGIE HOWELL.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, George C. McKee, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth

five hundred dollars in real estate in my own name, situate in the county of Belmont, in said district.

GEORGE C. McKEE.

Sworn to before me the 15th day of Jan'y, 1898.
[SEAL.] OSWALD SCHICK,
Notary Public.

And afterwards, to wit, on the 17th day of January, A. D. 1898, there was issued out of the clerk's office of the court aforesaid our certain writ of injunction, clothed in the words and figures following, to wit:

Writ of Injunction.

THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Eastern Division, }

The President of the United States of America to Harry Brister, treasurer of the county of Jefferson, Ohio, Greeting:

Whereas the Reymann Brewing Company, a corporation organized and existing under the laws of the State of West Virginia, with its principal office in the city of Wheeling, West Va., citizen of
13 the State of West Virginia, has filed on the chancery side of the circuit court of the United States for the eastern division of the southern district of Ohio a bill against Harry Brister, treasurer of Jefferson Co., Ohio, and has obtained an allowance for preliminary injunction, as prayed for in said bill:

Now, therefore, we, having regard to the matters in said bill contained, do hereby command and strictly enjoin you, the said Harry Brister, treasurer of Jefferson county, Ohio, from offering for sale or selling or further withholding any of the property of the complainant on which you have levied and which you have seized, and from seizing any other property of the said complainant as a means of collecting any of the Dow tax sought to be collected by you of the said complainant; which commands and injunctions you are respectively required to observe and obey until our said circuit court shall make further order in the premises.

Hereof fail not under the penalty of the law thence ensuing.

[SEAL.] Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of January, A. D. 1898, and in the 122 year of the Independence of the United States of America.

B. R. COWEN,
Clerk U. S. Circuit Court, S. D. O.,
By C. P. WHITE, *Deputy.*

And afterwards, to wit, on the 17th day of January, A. D. 1898, there was issued out of the clerk's office of the court aforesaid our certain writ of subpœna in chancery directed to the marshal of said district and against the defendants herein; which said subpœna in chancery is clothed in the words and figures following, to wit:

Subpœna in Chancery.

14 THE UNITED STATES OF AMERICA, *Southern District of Ohio, Eastern Division,* } ss:

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon Harry Brister, as treasurer of Jefferson county, Ohio, citizen of and resident of the State of Ohio, if he be found in your district, to be and appear in the circuit court of the United States for the eastern division of the southern district of Ohio aforesaid, at Columbus, on the first Monday in March next, to answer a certain bill in chancery filed and exhibited in said court against him by the Reymann Brewing Co., a corporation organized and existing under the laws of the State of West Virginia, with its principal office in the city of Wheeling, citizen of and resident of the State of West Virginia.

Hereof you are not to fail under the penalty of the law thence ensuing.

And have you then and there this writ.

[SEAL.] Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 17 day of January, A. D. 1898, and in the 122d year of the Independence of the United States of America.

Attest:

B. R. COWEN, *Clerk,*
By C. P. WHITE, *Deputy.*

Memorandum.

The said defendant is required to enter his appearance in this suit in the clerk's office of said court on or before the first Monday of February, 1898; otherwise the said bill may be taken *pro confesso.*

B. R. COWEN, *Clerk,*
C. P. WHITE, *Deputy.*

15 Summons endorsed: Cost bond, security for costs for which the plaintiff may be liable in this suit.

And afterwards, to wit, on the 25th day of January, A. D. 1898, came the marshal of the district and returned the aforesaid writ of injunction, with his proceedings thereon endorsed, into the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Marshal's Return of Injunction.

UNITED STATES OF AMERICA, *Southern District of Ohio,* } ss:

Received this writ at Marietta, Washington county, Ohio, on the 19th day of January, 1898, and executed the same at Steubenville, Jefferson county, Ohio, on the 20th day of January, 1898, by hand-

ing personally to Harry Brister, treasurer of Jefferson county, Ohio, a true and certified copy of this writ as within I am commanded.

MICHAEL DEVANNEY,
U. S. Marshal, S. D. O.,
By W. T. HARNESS, *Deputy.*

Fees, total, $9.28.

And afterwards, to wit, on the 25th day of January, A. D. 1898, came the marshal of the district to whom the aforesaid subpœna in chancery was in form directed, and returned the same into the clerk's office of the court aforesaid, with his proceedings thereon endorsed, clothed in the words and figures following, to wit:

Marshal's Return of Subpœna in Chancery.

UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

Received this writ at Marietta, Washington county, Ohio, on the 19th day of January, 1898, and executed the same at Steuben-
16 ville, Jefferson county, Ohio, on the 20th day of January, 1898, by handing personally to Harry Brister, treasurer of Jefferson county, Ohio, a true and certified copy of this writ as within I am commanded.

MICHAEL DEVANNEY,
U. S. Marshal, S. D. O.
By W. T. HARNESS, *Deputy.*

Fees, total, $9.28.

And afterwards, to wit, on the 28th day of January, A. D. 1898, the following appearance was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Appearance.

United States Circuit Court, Southern District of Ohio, Eastern Division.

THE REYMANN BREWING COMPANY, a Corporation, etc., Plaintiff,
vs.
HARRY BRISTER, Treasurer of Jefferson County, Defendant. } No. 852.

The undersigned, the defendant in the above-entitled action, hereby enters his appearance in said action.
January 27, 1898.

HARRY S. BRISTOR,
Treasurer of Jefferson County, Defendant.

And afterwards, to wit, on the 7th day of March, A. D. 1898, the following demurrer was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Demurrer.

Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

17 REYMANN BREWING COMPANY, a Corporation Organized and Doing Business under and by Virtue of the Laws of the State of West Virginia,

vs.

HARRY BRISTOR, Treasurer of the County of Jefferson and State of Ohio.

} In Chancery.

Demurrer of the above-named defendant, Harry Bristor, to the bill of complaint of the above-named plaintiff.

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in such manner or form as the same are therein set forth and alleged, demurs to the said bill, and for cause of demurrer shows that the said complainant has not in and by said bill made or stated such a cause as does or ought to entitle it to such relief as is thereby sought and prayed for against this defendant. Wherefore this defendant demands the judgment of this honorable court whether, with this and divers other good causes of demurrer appearing on said bill for which this defendant does demur thereto, he shall be compelled to make any answer to said bill, and he humbly prays to be hence dismissed with the reasonable costs in this behalf sustained.

ADDISON C. LEWIS,
Attorney for Defendant.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

ADDISON C. LEWIS,
Attorney for Defendant.

STATE OF OHIO,
Jefferson County, Southern District of Ohio, } *ss:*

18 Harry Bristor, being duly sworn, deposes and says: I am the above-named defendant. The foregoing demurrer is not interposed for delay.

HARRY S. BRISTOR.

Sworn to before me and signed in my presence this 7th day of March, 1898.

O. J. BEARD,
[SEAL.] *Notary Public in and for Jefferson County, Ohio.*

And afterwards, to wit, on the 24th day of February, A. D. 1899, the following opinion of Judge Thompson was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

19 *Opinion of Judge Thompson.*

United States Circuit Court, Southern District of Ohio, Eastern Division.

REYMANN BREWING COMPANY, a Corporation Organized, Existing, and Doing Business under and by Virtue of the Laws of the State of West Virginia, Complainant,

vs.

HARRY BRISTER, Treasurer of the County of Jefferson, in the State of Ohio, Defendant.

No. 852

This cause is submitted upon the bill, a general demurrer thereto, and a written statement of facts agreed upon by the parties. The statement of facts is as follows:

"*Statement of Facts Agreed.*

"The Reymann Brewing Company, the complainant, is a corporation resident in and a citizen of the State of West Virginia, and owns and operates a brewery at Wheeling, West Virginia, where it manufactures a beverage of malt and intoxicating liquor commonly known as beer. It packs said beer in wooden barrels of various sizes and also in glass bottles, which bottles are packed in wooden boxes called cases, twenty-four quart bottles or thirty-six pint bottles being packed in each case.

These barrels and cases are packed at the brewery of the Reymann Brewing Company, at Wheeling, in the State of West Virginia, there delivered to the common carrier, the railroad company, and shipped to Steubenville, in the county of Jefferson, in the State of Ohio, where they are received by Bert Meyers, who is employed by the Reymann Brewing Company in the capacity of soliciting
20 agent, salesman, and driver, and who calls on retail dealers in intoxicating liquors at their places of business in and about said city of Steubenville, and as such agent then and there solicits orders for and sells any number of the above-described packages desired. He then loads on the wagon owned by the Reymann Brewing Company the barrels or cases above described and delivers them to the purchasers in the original and unbroken packages in the same shape and condition as delivered to the common carrier at the brewery at Wheeling. Said agent also makes sales of said packages at and delivers the same from the place where stored at Steubenville. In no instance are any of the barrels or cases opened until after sold and delivered to the purchaser, and no change is made in any of the packages from the time they are packed at the

brewery at Wheeling until delivered to the persons purchasing the same.

Packages received by the said Bert Meyers at the railway station at Steubenville for which he has not received orders or which he has not already sold are stored in a room on the ground floor of a cold-storage house in said city of Steubenville, for which the Reymann Brewing Company pays a regular monthly rental, and of which room the said brewing company has the exclusive use and possession. The packages not delivered directly from the railway station to purchasers are delivered from the said storage house or room upon orders solicited, as aforesaid, and upon sales then and there at said storage-room made. The price of the beer thus delivered is collected in some instances from time to time by a collector from the brewery at Wheeling, who calls on the purchasers and collects, and in other instances such collections are made by said agent, Bert Meyers, at the time of sale and delivery at said storage-room.

During the period for which the assessments hereinafter mentioned were made the said Reymann Brewing Company carried on its beer business in said city of Steubenville in the same manner as herein described.

The horses, harness, and wagon described in the bill on which the defendant, Harry Brister, has levied, and which he has taken into his possession, are used by the Reymann Brewing Company solely in the matter of delivering to purchasers the packages above described.

The barrels and cases of beer described in the bill were packed at the brewery at Wheeling and shipped in the manner above described to Steubenville, Ohio, placed in the store-room above mentioned, and were to be there sold and delivered in the manner above described, when they were levied on and taken possession of by the defendant, Harry Brister. The defendant, Harry Bristor, is treasurer of Jefferson county, in the State of Ohio, and as such treasurer did so levy upon and take into his possession and has advertised for sale the following personal property of the Reymann Brewing Company:

21 Two horses (bay geldings), two horse-covers, one set of double harness, one beer wagon, thirty-seven of said original and unbroken cases of beer containing quarts, four of said original and unbroken cases of beer containing pints, sixty-five original and unbroken barrels of beer containing one-eighth size, one hundred and fourteen original and unbroken wooden barrels of beer of one-quarter size, twenty-nine original and unbroken wooden barrels of beer of one-half size; all of which he has done, as said treasurer of Jefferson county, Ohio, for the purpose of collecting from the said Reymann Brewing Company certain taxes or assessments and penalties, amounting to $873.60, and charged against said company on the tax duplicate in the office of said treasurer under and by virtue of a law of the State of Ohio entitled "An act providing against the evils resulting from the traffic in intoxicating liquors," passed May 14, 1886 (see Ohio Laws, vol. 83, p. 157), as amended March 21,

1887 (see Ohio Laws, vol. 84, p. 224), March 26, 1888 (see Ohio Laws, vol. 85, p. 117), and February 20, 1896 (see Ohio Laws, vol. 92, p. 34), known as the Dow law; which said levy and seizure were duly made, and which amount ($873.60) the said Reymann Brewing Company lawfully owes, if, under the circumstances in this statement set forth and the law herein referred to, said company or its business in said city of Steubenville, as herein described, should and may lawfull be assessed, as aforesaid.

The defendant will, unless restrained by the court, insist on collecting future assessments of the complainant under said Dow law in the manner prescribed by said law—that is to say, by further seizures.

It is agreed by both parties to the above-styled cause that the foregoing statement is a true statement of the facts, and that the said cause may be submitted to the court on said statement of facts agreed.

REYMANN BREWING COMPANY,
By HOWARD & HANDLAN, *Its Att'ys.*
HARRY BRISTOR,
Treasurer of the County of Jefferson, State of Ohio,
By A. C. LEWIS, *His Attorney.*

Upon these facts is the complainant entitled to the relief prayed in the bill?

The Ohio statute referred to in the agreed statement of facts, known as the "Dow law" and entitled "An act providing against the evils resulting from the traffic in intoxicating liquors," provides:

22 "SEC. 1. That upon the business of traffic-ing in spirituous, vinous, malt, or any intoxicating liquors, there shall be assessed, yearly, and shall be paid into the county treasury, as hereinafter provided, by every person, corporation or copartnership engaged therein, and for each place where such business is carried on by or for such person, corporation or copartnership, the sum of three hundred and fifty dollars.

"SECTION 2. That said assessment, together with any increase thereof, as penalty thereon, shall attach and operate as a lien upon the real property on and in which such business is conducted, as of the fourth Monday of May each year, and shall be paid at the times provided for by law for the payment of taxes on real or personal property within the State, to wit: one-half on or before the twentieth day of June, and one-half on or before the twentieth day of December, of each year."

"SECTION 4. That if any person, corporation, or copartnership shall refuse or neglect to pay the amount due from them under the provisions of this act within the time therein specified, the county treasurer shall thereupon forthwith make said amount due with all penalties thereon, and four per cent. collection fees and costs, by distress and sale, as on execution, of any goods and chattels of such person, corporation or copartnership; he shall call at once at the place of business of each person, corporation or copartnership; and

in case of the refusal to pay the amount due, he shall levy on the goods and chattels of such person, corporation or copartnership, wherever found in said county, or on the bar, fixtures or furniture, liquors, leasehold and other goods and chattels used in carrying on such business, which levy shall take precedence of any and all liens, mortgages, conveyances or incumbrances hereafter taken or had on such goods and chattels, so used in carrying on such business; nor shall any claim of property by any third person to such goods and chattels, so used in carrying on such business, avail against such levy so made by the treasurer, and no property, of any kind, of any person, corporation or copartnership liable to pay the amount, penalty, interest and costs due under the provisions of this act, shall be exempt from said levy. The treasurer shall give notice of the time and sale of the personal property to be sold under this act, the same as in cases of the sale of personal property on execution; and all provisions of law applicable to sales of personal estate on execution shall be applicable to sales under this act, except as herein otherwise provided; and all moneys collected by him under this act shall be paid, after deducting his fees and costs, into the county treasury. In the event of the treasurer, under the levy provided for under this act, being unable to make the amount due
23 thereunder, or any part thereof, the county auditor shall place the amount due and unpaid on the tax duplicate against the real estate in which said traffic is carried on, and the same shall be collected as other taxes and assessments on said premises."

"SEC. 8. The phrase 'traffic-ing in intoxicating liquors,' as used in this act means the buying or procuring and selling of intoxicating liquors otherwise than upon prescription issued in good faith by reputable physicians in active practice, or for exclusively known mechanical, pharmaceutical, or sacramental purposes, but such phrase does not include the manufacture of intoxicating liquors from the raw material, and the sale thereof, at the manufactory, by the manufacturer of the same in quantities of one gallon or more at any one time."

The contention of complainant is that this law, properly construed, imposes no tax upon manufacturers of beer, whether residents or non-residents of Ohio; but that, under the construction placed upon it by the taxing officers of Jefferson county, Ohio, it is sought to subject the complainant to the tax prescribed by the law and at the same time to exempt the domestic manufacturers therefrom. I agree that this law does not impose a tax upon the manufacturers as such. It is directed against those who traffic in intoxicating liquors, and have a place or places where the traffic is carried on.

The manufacturers within and without the State may sell at the manufactory and ship to any part of the State of Ohio, and, I think, may solicit orders for their goods in any part of the State, to be shipped from the manufactory. But if they establish places within the State distinct from the manufactory, where their goods are to be stored, for the purposes of sale and delivery, and such goods are there sold and delivered, then they become trifickers within the meaning of the law and are liable to pay the tax.

Peitz *vs.* The State, 68 Wis., 538.

24 The only question to be determined is whether the facts agreed upon show that the complainant has established a place in the city of Steubenville, in the county of Jefferson, State of Ohio, where beer is sold and delivered.

The agreed statement shows that—

"Packages received by the said Bert Meyers at the railway station at Steubenville, for which he has not received orders or which he has not already sold or stored in a room on the ground floor of a cold-storage house in said city of Steubenville, for which the Reymann Brewing Company pays a regular monthly rental, and of which room the said brewing company has the exclusive use and possession; the packages not delivered directly from the railway station to purchasers are delivered from the said storage-house or room upon orders solicited, as aforesaid, and upon sales then and there at said storage-room made * * * and in other instances such collections are made by said agent, Bert Meyers, at the time of sale and delivery at said storage-room. * * * The barrels and cases of beer described in the bill were * * * placed in the store-room above mentioned and were to be there sold and delivered."

And, again:

"Said agent also makes sales of said packages at and delivers the same from the place where stored at Steubenville."

It is clear that complainant is a trafficker in intoxicating liquors, having a place in the city of Steubenville, Jefferson county, Ohio, where the traffic is carried on within the meaning of the Dow law and is liable to the tax prescribed by that law, and there is no discrimination against the complainant in favor of traffickers resident within the State. The demurrer will therefore be sustained and the bill dismissed at the costs of the complainant.

25 And afterwards, to wit, on the 25th day of February, A. D. 1899, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal Entry, Journal D, Page 89.

The defendant came this day and, upon leave of court, withdrew his demurrer heretofore filed herein. Thereupon this cause, coming on to be heard, was submitted to the court upon the bill and the statement of facts agreed to by the parties and filed herein and was argued by counsel; upon consideration whereof the court finds the equities of the case in favor of the defendant; and it is therefore ordered, adjudged, and decreed that said bill be, and the same hereby is, dismissed at the cost of the complainant, and that the defendant recover his costs herein expended, taxed at $—, from the complainant.

And afterwards, to wit, on the 9th day of May, A. D. 1899, the following petition for appeal was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Petition for Appeal.

UNITED STATES OF AMERICA,
District of Ohio.

In the Circuit Court, Sixth Circuit, Southern District, Eastern Division.

REYMANN BREWING COMPANY, a Corporation Organized, Existing, and Doing Business under and by Virtue of the Laws of the State of West Virginia, Complainant,
vs.
HARRY BRISTER, Treasurer of the County of Jefferson, in the State of Ohio, Defendant.

In Chancery, with Injunction.

To the hon. judges of the circuit court of the United States for the district of Ohio:

Reymann Brewing Company, a corporation organized
26 existing, and doing business under and by virtue of the laws of the State of West Virginia, party to the above-entitled cause, present and file this their petition for an appeal to the Supreme Court of the United States from the final order and decree rendered by the Hon. Albert C. Thompson in the above-entitled cause on the 25th day of February, A. D. 1899, dissolving the preliminary injunction and dismissing the bill of complaint of the said complainant.

Hereto annexed and herewith filed with the clerk of the said court of the United States for the southern district of Ohio is an assignment of errors to the said final order and decree, which sets out separately and particularly each error asserted and intended to be urged and upon which a reversal of the decree is asked.

JOHN A. HOWARD AND
J. B. HANDLAN,
Solicitors for Complainant.

Filed the 9th day of May, 1899.

And afterwards, to wit, on the 9th day of May, A. D. 1899, the following assignment of errors was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Assignment of Errors.

UNITED STATES OF AMERICA, }
District of Ohio. }

In the Circuit Court, Sixth Circuit, Southern District, Eastern Division.

REYMANN BREWING COMPANY, a Corporation Organized, Existing, and Doing Business under and by Virtue of the Laws of the State of West Virginia, Complainant,
vs.
HARRY BRISTER, Treasurer of the County of Jefferson, in the State of Ohio, Defendant.

In Chancery, with Injunction.

27 To the hon. judges of the circuit court of the United States for the district of Ohio:

And now comes The Reymann Brewing Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, complainant in the above-named cause, and excepts to the final order and decree rendered by the Hon. Albert C. Thompson, United States district judge, herein, and filed the 25th day of February, A. D. 1899, dissolving the preliminary injunction and dismissing the bill of complaint of the said complainant:

(1.) Because the bill of complaint, together with the agreed statement of facts, show a right in the complainant, under the Constitution and laws of the United States, to conduct its business in the manner and form in which the same was conducted.

(2.) Because the bill of complaint and agreed statement of facts present a case upon which the jurisdiction of a court of equity alone can be founded and to which there is no adequate remedy at law for the correction of any of the matters and things alleged in the said bill of complaint and shown in the agreed statement of facts.

(3.) Because the complainant has by the said bill of complaint, supported by the agreed statement of facts, made and stated a case to entitle the said complainant to the relief prayed for in said bill concerning the matters and things contained therein.

(4.) Because his honor erred in holding that the provisions of the act of the General Assembly of the State of Ohio commonly known as "the Dow law" and the statutes of the State of Ohio referring to the sale of intoxicating liquors, in so far as said laws forbid manufacturers and brewers of the State of West Virginia and all other States from importing beer into the State of Ohio for
28 sale in the original, unbroken package and the sale of said package after the importation, are not a discrimination against the citizens and products of other States in favor of the citizens and products of the State of Ohio, and therefore void as to citizens and products of States other than the State of Ohio.

(5.) Because his honor erred in holding that the provisions of the said Dow law and statutes, in so far as the same relate, refer, and apply to beer imported by the manufacturer or brewer of another State from said other State into the State of Ohio for sale in the original package and a sale thereof after such importation, are a valid exercise of the police power of the State and comes within the provisions of the act of Congress of 1890 known as "the Wilson act."

(6.) Because his honor erred in hol ling the provisions of the said Dow law and statutes to be laws enacted in the exercise of the police power of the State of Ohio in so far as the said Dow law and statutes applied to an importation of the original package of beer by the manufacturer and the sale thereof after the importation has been made in the State of Ohio.

(7.) Because his honor erred in holding that, in view of the provisions of the Dow law, a non-resident manufacturer of beer cannot import the same into the State of Ohio in original packages in amounts exceeding one gallon and store and sell the same, either by himself or through agent, without becoming liable to pay the Dow tax.

(8.) Because the statutes of the State of Ohio illegally discriminate in favor of the manufacturers and brewers of beer who have their plant located within the State of Ohio, and against the manufacturers and brewers of beer who are residents of and have their plant respectively located in other States of the United States,
29 and which illegal discrimination, therefor-, makes null and void said statutes in so far as manufacturers or brewers of beer who have their plants or breweries located in another State are concerned.

(9.) Because the statutes of the State of Ohio do not require the Dow tax to be paid by the manufacturers or brewers of beer who reside and have their plant located within the State of Ohio when the amount sold exceeds one gallon, and do require, according to said final order and decree, that a non-resident manufacturer or brewer of beer shall in any event pay the Dow tax, and is a discrimination, therefore, against the constitutional rights of the non-resident brewers and manufacturers aforesaid.

(10.) Because the statutes of the State of Ohio are regulations of commerce between the States as applied to the case as made in the bill of complaint and upon the agreed statement of facts, and, that being such regulations, are therefore void.

(11.) Because his honor erred in holding that the statute hereinbefore referred to is intended to apply to manufacturers and brewers of beer whose plants are not within the State of Ohio.

(12.) Because his honor erred in holding that this complainant, The Reymann Brewing Company, a corporation, was traffic-ing in intoxicating liquor in the county of Jefferson, State of Ohio, as a dealer and not selling as a manufacturer, and that it was therefore not entitled to the rights of a non-resident manufacturer engaged in interstate commerce.

(13.) Because his honor erred in dissolving the injunction and dismissing the bill of complaint of the complainant.

(14.) Because his honor erred in refusing to order that the preliminary injunction heretofore granted be made permanent,
30 according to the tenor of the prayer in the bill of complaint.

JOHN A. HOWARD AND
J. B. HANDLAN,
Solicitors for the Complainant.

Filed the 9th day of May, A. D. 1899.

Prayer of the petitioner granted and appeal allowed.

_____,
District Judge.

Filed the 9th day of May, A. D. 1899.

And afterwards, to wit, on the 9th day of May, A. D. 1899, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal Entry, Journal D, Page 178.

This day came the complainant, by its solicitors, and presented its petition for appeal to the Supreme Court of the United States and its assignment of errors, and the appeal is allowed in open court and the appeal bond is fixed in the sum of fifteen hundred dollars ($1,500.00).

And afterwards, to wit, on the 11th day of May, A. D. 1899, the following appeal bond was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, Reymann Brewing Company, a corporation, as principal, and Samuel Bailey, Jr., and Joseph S. Trevor, as sureties, are held and firmly bound unto Harry Brister, treasurer of the county of Jefferson, in the State of Ohio, in the full and just sum of fifteen hundred dollars, to be paid to the said Harry Brister, treasurer as aforesaid, his successors in office, certain
31 attorneys, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this ninth day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a session of the United States circuit court, southern district of Ohio, eastern division, in a suit depending in said court between Reymann Brewing Company, a corporation, and Harry Brister, treasurer, as aforesaid, a decree was rendered against the said Reymann Brewing Company, a corporation, and the said Reymann Brewing Company, a corporation, having obtained an appeal and filed a copy thereof in the clerk's office of the

said court to reverse the decree in the aforesaid suit, and a citation directed to the said Harry Brister, treasurer as aforesaid, citing and admonishing him to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, in said circuit, on the eighth day of June next:

Now, the condition of the above obligation is such that if the said Reymann Brewing Company, a corporation, shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

REYMANN BREWING COMPANY, [SEAL.]
A Corporation,

By J. B. HANDLAN,
Attorney-in-fact and Attorney-at-law for said Corporation.

SAM'L BAILEY, JR. [SEAL.]
JOSEPH S. TREVOR. [SEAL.]

Sealed and delivered in presence of—
ROB'T C. GEORGI.
GEO. W. HAYS, JR.

Approved by—
A. C. THOMPSON,
U. S. District Judge, Sitting and Holding Circuit Court.

32 SOUTHERN DISTRICT OF OHIO, *ss:*

I, Samuel Bailey, Jr., one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth five thousand dollars in real estate in my own name, situate in the county of Hamilton, in said district.

SAM'L BAILEY, JR.

Sworn to before me the 11th day of May, 1899.
[SEAL.] ROB'T C. GEORGI,
Dep. Clerk, U. S. Circuit Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Joseph S. Trevor, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth five thousand dollars in real estate in my own name, situate in the county of Hamilton, in said district.

JOSEPH S. TREVOR.

Sworn to before me the 11th day of May, 1899.
[SEAL.] ROB'T C. GEORGI,
Dep. Clerk, U. S. Circuit Court, S. D. O.

33 THE UNITED STATES OF AMERICA, }
Southern District of Ohio, Eastern Division, } *ss:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America within and for the division and district aforesaid,

do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above-entitled cause as the same appears of record and on file in the clerk's office of said court.

Seal of the Circuit Court, South'n Dist. of Ohio.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Columbus, Ohio, this 15th day of May, A. D. 1899.

B. R. COWEN, *Clerk*,
By JANIE W. F. COWEN, *Deputy Clerk.*

34 THE UNITED STATES OF AMERICA, *ss:*

To Harry Brister, treasurer of the county of Jefferson, in the State of Ohio, Greeting:

Whereas Reymann Brewing Company, a corporation, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of Ohio, eastern division, made in favor of you, the said Harry Brister, treasurer as aforesaid, and has filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the tenth day of June next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Cincinnati, in the sixth circuit, this 11th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

A. C. THOMPSON,
U. S. District Judge, Southern District of Ohio, Sitting and Holding U. S. Circuit Court.

Service of the foregoing citation hereby acknowledged this 12th day of May, 1899.

HARRY S. BRISTOR,
Treasurer of Jefferson County, Ohio.

[Endorsed:] United States circuit court, S. D. O., E. D. No. 852. Reymann Brewing Co. — Harry Brister, treasurer. Citation to appellee. Filed May 13th, 1899. B. R. Cowen, clerk.

Please acknowledge service and return to clerk at Cincinnati, Ohio.

Endorsed on cover: File No., 17,431. S. Ohio C. C. U. S. Term No., 317. Reymann Brewing Company, appellant, *vs.* Harry Brister, treasurer of the county of Jefferson, in the State of Ohio. Filed May 31st, 1899.

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